

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

_____)	
In the Matter of)	
)	
Service Rules for Advanced Wireless)	WT Docket No. 12-70
Services in the 2000-2020 MHz and 2180-)	
2200 MHz Bands)	
)	
Fixed and Mobile Services in the Mobile)	ET Docket No. 10-142
Satellite Service Bands at 1525-1559 MHz)	
and 1626.5-1660.5 MHz, 1610-1626.5 MHz)	
and 2483.5-2500 MHz, and 2000-2020 MHz)	
and 2180-2200 MHz)	
)	
Service Rules for Advanced Wireless)	WT Docket No. 04-356
Services in the 1915-1920 MHz, 1995-2000)	
MHz, 2020-2025 MHz and 2175-2180 MHz)	
Bands)	
_____)	

REPLY COMMENTS OF METROPCS COMMUNICATIONS, INC.

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REPLY COMMENTS OF METROPCS COMMUNICATIONS, INC.

MetroPCS Communications, Inc. (“MetroPCS”),¹ by its attorneys, hereby respectfully submits its reply to the comments submitted in response to the *Notice of Proposed Rulemaking* (“NPRM”) and *Notice of Inquiry* (“NOI”) issued by the Federal Communications Commission (the “FCC” or “Commission”) in the above-captioned proceedings.² While DISH attempts to show that the entire 40 MHz must be within the control of a single licensee, DISH’s showing

¹ For the purpose of these reply comments, the term “MetroPCS” refers collectively to MetroPCS Communications, Inc., and all of its FCC-license holding subsidiaries.

² *In the Matter of Service Rules for Advanced Wireless Services in the 2000-2020 MHz and 2180-2200 MHz Bands; Fixed and Mobile Services in the Mobile Satellite Service Bands at 1525-1559 MHz and 1626.5-1660.5 MHz, 1610-1626.5 MHz and 2483.5-2500 MHz, and 2000-2020 MHz and 2180-2200 MHz; Service Rules for Advanced Wireless Services in the 1915-1920 MHz, 1995-2000 MHz, 2020-2025 MHz and 2175-2180 MHz Bands*, in WT Docket Nos. 12-70, 04-356, ET Docket No. 10-142, Notice of Proposed Rulemaking and Notice of Inquiry (rel. Mar. 21, 2012) (“NPRM”).

falls short, and the Commission should adopt either of MetroPCS' 20 MHz or 30 MHz proposals to reflect the significant increase in value resulting from terrestrial-only use of the MSS spectrum. In reply, the following is respectfully shown:

I. INTRODUCTION AND SUMMARY

In the initial comments, MetroPCS and others recognized the great potential for the 2 GHz MSS band to alleviate the current serious broadband terrestrial spectrum crunch and to promote increased competition in the wireless industry. MetroPCS commended the Commission for initiating a rulemaking proceeding in an effort to unlock the band's full terrestrial broadband potential after many years of unfulfilled promises by MSS licensees. However, MetroPCS strenuously opposed the Commission's proposal to grant an undeserved windfall to the current licensee, DISH. MetroPCS advanced instead two alternative plans that would allow DISH to pursue both satellite and terrestrial mobile services, while recapturing a portion of the spectrum for auction for commercial broadband use in exchange for such flexible rights. The *NPRM* also prompted comment from many other interested parties containing various suggestions and recommendations in connection with the Commission's proposal. While no clear consensus emerged, many of the comments, *including the comments of DISH*, serve to underscore the wisdom of the approach advocated by MetroPCS.

For example, most parties agreed with MetroPCS that rule changes which will foster the prompt buildout of the 2 GHz MSS for terrestrial use are necessary and appropriate, especially in light of the substantial increase in value resulting from terrestrial use. However, the means offered to achieve this goal varied among the commenters. Generally, the commenting parties either: (1) supported assigning the AWS-4 license to the incumbent MSS licensee as was

generally proposed in the *NPRM*;³ (2) supported reassignment of the licenses through auction;⁴ or (3) supported stringent buildout requirements for the incumbent licensee.⁵

Ironically, the comments that provide the strongest case against granting all of the AWS-4 licenses solely to DISH in the first instance are those of DISH itself. Rather than committing to the construction obligations the Commission proposes, which still result in DISH receiving a windfall, DISH seeks more lenient buildout requirements and construction timetables. By doing so, DISH affirmatively demonstrates that it is not the appropriate party to be entrusted with the task of finally putting this prime 2 GHz spectrum to beneficial public use. Rather, DISH appears to be seeking further delay by trying to equate conditions imposed on other licensees, who have demonstrated their bona fide standing by paying billions of dollars at auction, with the present circumstances. The goal of this proceeding should be to make more spectrum available for those providers that are both interested in, and capable of, building out the 2 GHz MSS for terrestrial use.

MetroPCS believes that subjecting DISH to more stringent build-out requirements, when it already has indicated it cannot meet the modest proposals in the *NPRM*, would not solve the fundamental problem of getting spectrum in the hands of those who value it most. Construction obligations generally only favor incumbent operators and will serve to deter others from

³ See e.g., Comments of DISH Network Corporation (“DISH”) (filed May 17, 2012); Comments of Sprint Nextel Corporation (“Sprint”) (filed May 17, 2012); Comments of Globalstar (filed May 17, 2012); Comments of U.S. GPS Industry Council (filed May 17, 2012); Comments of COMPTTEL (filed May 17, 2012); Comments of Alcatel-Lucent (filed May 17, 2012); Comments of Satellite Industry Association (filed May 17, 2012); Comments of Computer & Communications Industry Association (filed May 17, 2012).

⁴ See e.g., Comments of T-Mobile USA (“T-Mobile”) (filed May 17, 2012); Comments of MetroPCS Communications, Inc. (“MetroPCS”) (filed May 17, 2012).

⁵ See e.g., Comments of RCA – The Competitive Carriers Association (filed May 17, 2012); Comments of New America Foundation, Public Knowledge, and Consumers Union (“New America Foundation et al.”) (filed May 17, 2012).

participating in a sale if DISH sells the spectrum. Therefore, MetroPCS reiterates its request, which finds support from others,⁶ that the Commission recapture a portion of the 2 GHz spectrum from DISH in exchange for granting it increased flexibility on the portion it retains. This not only will enable DISH to provide services at its own pace, but also will ensure that the remainder of the spectrum is put to use in a timely and efficient fashion.

II. BASED ON THE RECORD THE COMMISSION MUST ENSURE THIS SPECTRUM IS IMMEDIATELY PUT TO TERRESTRIAL USE

As noted above, the comments on the *NPRM* contained varied responses to the Commission's proposals. Some comments support assigning the AWS-4 license to the incumbent MSS licensee as it was generally proposed in the *NPRM*,⁷ while others urge that the incumbent MSS licensee only be granted increased flexibility with stringent conditions being attached to prevent a windfall.⁸ There is, however, one area of near universal agreement: the wireless industry is in the midst of a severe terrestrial broadband spectrum crunch, and the Commission needs to take prompt action to permit the industry to continue to innovate and grow on a competitive basis. This consensus must come as no surprise to the Commission. The cry for more spectrum has been recorded in virtually every recent proceeding touching on the wireless industry. Indeed, the calls for additional spectrum run the gamut from the smallest carriers to the largest, from wireless trade associations to equipment manufacturer industry associations, and finally, from the customers themselves. The Commission has heard the calls

⁶ See T-Mobile Comments 17-24.

⁷ See *infra* footnote 3.

⁸ See *infra* footnote 5.

and in response, has issued reports, statements, and inquiries with the objective of making more spectrum available for commercial broadband use.⁹

In the *NPRM*, the Commission again acknowledged the growing demands for advanced mobile broadband services due to the rapid adoption of smartphones and tablets, and the higher capacity demands of advanced wireless 4G LTE networks.¹⁰ In response, commenters provided statistics and other showings underscoring the severe need for spectrum. For example, the Telecommunications Industry Association (“TIA”), which attributes the ever-increasing shortage of wireless spectrum in large part to the increase in smartphone use, estimates that “[s]pending on data services will overtake the voice services market in 2013, and by 2015 data services will be 89 percent greater than voice services.”¹¹ Similarly, Alcatel-Lucent, which is well attuned to the demands of the marketplace based upon its status as a major infrastructure provider, urged the Commission to enable terrestrial use of the 2 GHz MSS band in order to alleviate the growing spectrum crunch.¹² MetroPCS agrees; the 2 GHz MSS band is ideal to meet the surging demand for terrestrial mobile broadband services. Accordingly, MetroPCS urges the Commission to take prompt action to allow this relief to arrive sooner rather than later.¹³

⁹ See generally FEDERAL COMMUNICATIONS COMMISSION, CONNECTING AMERICA: A NATIONAL BROADBAND PLAN FOR OUR FUTURE (2010); Julius Genachowski, Chairman, FCC, Remarks at CTIA Wireless 2011, Orlando Florida, March 22, 2011, http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-305309A1.pdf; *In the Matter of A National Broadband Plan for Our Future*, Notice of Inquiry, FCC 09-31 (rel. Apr. 8, 2009).

¹⁰ *NPRM* at ¶ 10.

¹¹ Comments of the Telecommunications Industry Association (“TIA”), 3-4 (filed May 17, 2012).

¹² Alcatel-Lucent Comments, 2-3.

¹³ See MetroPCS Comments, 13-19.

a. The 2 GHz MSS Spectrum Licenses Should Be Modified To Permit Terrestrial Use

The 2 GHz MSS band, which is prime spectrum for terrestrial broadband use, has been allowed to lie fallow for too long. After a decade of unsuccessful incremental efforts to revise the rules to permit a viable MSS service to be integrated with a land based mobile deployment, MetroPCS agrees with the Commission that it is time for the Commission to cut its losses and take bold action to redeploy the spectrum.¹⁴ The record justifies such action because there is a strong consensus for the Commission to modify the MSS licenses to permit some or all of the 2 GHz band to be devoted to terrestrial use.¹⁵ For example, commenters such as Globalstar and COMPTTEL, who support DISH being granted the AWS-4 authorizations as proposed in the *NPRM*, also support license modification to permit the spectrum to be converted to terrestrial use.¹⁶ T-Mobile and NTCH, who advocate auctioning some or all of new AWS-4 licenses off to others using competitive bidding, also support Commission modification of these licenses.¹⁷ Several other commenters also support the redeployment of the MSS spectrum through license modifications and agree that the Commission has ample authority under Section 316 of the Communications Act of 1934, as amended (the “Act”), to do so.¹⁸

Perhaps most noteworthy is the fact that even DISH agrees that “license modification is the most realistic, timely solution to rapid deployment and best serves the public interest.”¹⁹

¹⁴ See MetroPCS Comments, 6 -13 (providing a detailed history of the failed attempts to utilize the 2 GHz MSS spectrum).

¹⁵ See *e.g.*, Alcatel-Lucent Comments; Sprint Comments; Verizon Comments; RCA Comments.

¹⁶ Globalstar Comments, 5-6; COMPTTEL Comments.

¹⁷ T-Mobile Comments, 17-24; Comments of NTCH, Inc. (filed May 17, 2012); *see also* MetroPCS Comments, 29-33.

¹⁸ See *e.g.*, DISH Comments, 15-17; U.S. GPS Industry Council, 3; MetroPCS Comments, 3-39.

¹⁹ DISH Comments, 16.

DISH is advocating license modifications that would serve to make it the sole beneficiary of the increased flexibility to use the MSS spectrum in whole or in part for terrestrial uses. But, there is nothing in Section 316, upon which DISH relies, that limits the Commission's license modification authority to changes that the licensee views as favorable. Indeed, there are numerous instances in which the authority of the FCC to modify licenses over the objection of the license holder have been exercised.²⁰ DISH, having conceded that the Commission has the authority to modify its recently acquired MSS licenses, cannot be heard to complain if the Commission takes the more appropriate action of recapturing a portion of the MSS spectrum in order to compensate for the increase in spectrum value and utility that DISH would enjoy by being granted an additional terrestrial license for the portion DISH retains.²¹

Once the Commission decides to modify the 2 GHz MSS licenses to provide for increased terrestrial use, it must then determine the most appropriate way to ensure that the spectrum is put to immediate beneficial use thus enabling the public to share in the increased value of the current MSS licenses. MetroPCS continues to strongly disagree with commenters who propose that the Commission should simply reassign the modified (and improved) licenses to the incumbent licensees, or simply impose additional conditions in the license. Doing so not only would grant an unearned windfall to DISH, but it would continue the legacy of granting concessions to MSS licensees who have demonstrated neither the commitment or the ability to provide to provide broad-based terrestrial mobile service. Further, such a policy would not help the rest of the industry, especially the small and mid-tier carriers who are suffocating due to the

²⁰ See generally *In the Matter of Preserving the Open Internet, Broadband Industry Practices*, Report and Order, FCC 10-201 (rel. Dec. 23, 2010); *In the Matter of Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, Second Report and Order, FCC 11-52 (rel. Apr. 7, 2011).

²¹ There certainly would be no "taking" in violation of the 5th Amendment when DISH receives fair compensation in the form of enhanced spectrum rights for the retained portion of the band.

lack of spectrum. As is set forth in greater detail below, the DISH comments in this proceeding resoundingly affirm that the Commission should not simply grant DISH increased flexibility in the hope that it will result in additional competition. The only way to ensure this increased competition is to adopt MetroPCS' proposals and have the MSS spectrum recovered and put to auction. Only then can the Commission be assured that the spectrum will help alleviate the current spectrum crunch.

III. DISH HAS DEMONSTRATED THAT IT IS NOT THE APPROPRIATE CANDIDATE TO PUT THE 2 GHZ SPECTRUM TO OPTIMAL USE

The comments of RCA in this proceeding correctly observe that “if the AWS-4 spectrum is not deployed in a timely and procompetitive manner, then the changes in service rules for the 2 GHz MSS Band not only will present a lost opportunity, but may end up being counterproductive.”²² Because the beneficial wireless revolution risks being stalled by the current spectrum crunch, the Commission must ensure that any recipient of the proposed AWS-4 licenses is willing and able to put the spectrum to use in the near term on a broad scale and in an efficient manner. MetroPCS submits that the incumbent licensee, DISH, has repeatedly demonstrated that it is not the appropriate candidate to take on this role, and accordingly urges the Commission to rethink its proposals in the *NPRM*, lest it perpetuate, rather than resolve, the underutilization of this precious 2 GHz spectrum resource.

DISH now has had multiple opportunities to demonstrate that it is committed to a prompt and robust terrestrial mobile deployment of the 2 GHz spectrum, but has utterly failed to do so. As MetroPCS earlier pointed out in its comments on the applications DISH submitted seeking Commission consent to acquire the MSS licenses of both DBSD and TerreStar, the applications' public interest showing was devoid of any concrete business plan demonstrating that DISH was

²² RCA Comments, 3.

committed and prepared to construct and operate a nationwide terrestrial broadband system.²³ Rather than respond to these challenges by proffering a coherent mobile network deployment plan, DISH recoiled by stating that if it did not receive immediately receive the waivers it was seeking to facilitate land-based mobile operations it might not necessarily build a terrestrial network at all.²⁴ This is hardly the reaction of a company that is devoted to the substantial undertaking of building a competitive terrestrial wireless broadband network in the near term – irrespective of how much they paid for their licenses.²⁵

Moreover, as is set forth in greater detail below, the comments filed by DISH in response to the *NPRM* continue this theme of an ambivalent intent to build by seeking even greater flexibility on buildout. Any company committed to the construction and operation of a competitive national wireless broadband system would have viewed the Commission’s proposal in the *NPRM* as a homerun. Not only was the Commission recommending granting substantially increased terrestrial rights solely to DISH, but the Commission was planning to eliminate the satellite gating criteria and ATC limitations entirely and to impose only modest build-out requirements with no windfall profit payment. By any measure, this increase in value is two to ten times what DISH paid for these licenses in bankruptcy.²⁶ However, rather than embracing

²³ See Petition of MetroPCS Communications, Inc. to Require Further Public Interest Showing or, in the Absence of Such a Showing, to Deny the DISH Network Corporation Applications, in IB Docket No. 11-150 (filed Oct. 17, 2011) (“*MetroPCS DISH Petition*”).

²⁴ Bill Ray, *FCC Denies DISH a Fast-Track Waiver for Grounded Network*, THE REGISTER (Mar. 5, 2012) http://www.theregister.co.uk/2012/03/05/dish_waiver/.

²⁵ As MetroPCS has demonstrated in the Verizon/SpectrumCo transaction, even applicants who buy licenses at auction can be speculators. Indeed, SpectrumCo is being rewarded for its speculation by seeking a return on its spectrum investment, along with ancillary deals with Verizon that are worth considerably more. See e.g., MetroPCS Ex Parte in WT Docket 12-4 (filed Apr. 26, 2012).

²⁶ DISH paid \$2.8 billion to acquire the MSS spectrum from DBSD and TerreStar. As MetroPCS previously calculated, that spectrum could be worth anywhere from \$8.4 billion to

this Government largesse, DISH in its comments seeks further concessions. Once again, the response serves to confirm that the Commission would be repeating the past mistakes if it were to put all of the AWS-4 licenses in the DISH basket.

a. DISH Seeks A Longer Buildout, And Lower Coverage Requirement

DISH demonstrates its lack of commitment to near term deployment of a significant terrestrial system by asking the Commission to further relax the relatively low construction standards that the Commission has proposed.²⁷ Although DISH claims that it will “aggressively build out a broadband network to provide competitive choice and innovative offerings,” its recommended adjustments to the performance requirements do not support this statement.²⁸ DISH seeks an extended interim buildout period of four years, additionally asks for a lower interim coverage requirement of 20 percent (approximately 60 Million POPs).²⁹ Therefore, not only is DISH seeking to provide coverage to less POPs, but wants more time to do so.

DISH’s reasoning behind this request is its claim that “a three-year milestone is unrealistic for a new mobile broadband service provider and a new band, especially one that

\$33.2 billion based on recently-used spectrum valuations. Other parties also note the clear difference in price: NTCH found that “there is a gaping chasm of about \$6 billion (!) between what DISH paid for the 2 Gig Band and what the spectrum would be worth on the open market as terrestrial spectrum.” NTCH Comments, 3. In addition, New America et al. agreed with Wall Street analysts that the AWS-4 license would be between \$4 to \$6 billion. New America et al. Comments, 6.

²⁷ MetroPCS notes that the buildout standards proposed by the Commission are less than the construction commitments *voluntarily offered* by LightSquared when it secured the waivers associated with its ATC authority. *See In the Matter of LightSquared Subsidiary LLC Request for Modification of its Authority for an Ancillary Terrestrial Component*, Order and Authorization, DA 11-133, ¶ 11 (rel. Jan. 26, 2011).

²⁸ DISH Comments, 18.

²⁹ *Id.* at 19-23. The Commission proposed a three year interim buildout period, with a coverage requirement of 30 percent. *NPRM* ¶ 92.

lacks a global ecosystem for LTE-Advanced equipment.”³⁰ T-Mobile, however, refutes DISH’s assertions that the proposed buildout plan is too ambitious by noting that “T-Mobile’s own experience deploying a wireless broadband network in spectrum previously unoccupied by commercial mobile operations demonstrates the speed with which a licensee can deploy a wireless broadband network in such a band, when circumstances call for it.”³¹ In fact, T-Mobile was able to “clear federal users *and* deploy a terrestrial network covering approximately *107 million people* in just over two years.”³² This is one-half of the *four years* DISH is asking for to cover approximately 60 Million POPs. And, DISH does not face the spectrum clearing challenges with the AWS-4 spectrum that T-Mobile had to contend with in the AWS band.³³ Nonetheless, DISH asserts that “[e]ven at four years, a 30 percent POPs coverage requirement [approximately 90 million people] is aggressive and likely unrealistic.”³⁴

DISH also requests that the Commission modify the final milestone requirement, changing the coverage requirement from 70 percent to a 65 percent coverage requirement, or approximately, 200 Million POPs, to be covered by the end of the seven year buildout period as proposed by the Commission.³⁵ This again is belied by T-Mobile’s own experience. T-Mobile’s national 3G network covered over 205 million people in the U.S within approximately three years after receiving its AWS-1 licenses.”³⁶ That is more than DISH proposes to cover, and in half as much time as DISH claims to need.

³⁰ DISH Comments, 22.

³¹ T-Mobile Comments 10-11.

³² *Id.* at 11 (emphasis added).

³³ *Id.*

³⁴ DISH Comments, 22-23.

³⁵ *Id.* at 23; *see also* NPRM ¶ 92.

³⁶ T-Mobile Comments, 11.

In its defense, DISH claims that its “status as a prospective new entrant in the mobile broadband marketplace and its lack of existing wireless infrastructure” requires that it be given additional time and lower hurdles.³⁷ While it is true that new entrants will require additional time over incumbents, this head start has diminished over time as carriers co-locate on existing sites. DISH’s excuse merely reiterates the point that the Commission is making a mistake to rely on DISH to reverse the disappointing wireless service record of the MSS licensees. The MetroPCS proposals, which would allow a portion of the spectrum to get into the hands of experienced operators with the demonstrated capability to implement systems quickly, does not suffer from this infirmity.

b. DISH Requests More Lenient Sanctions For Buildout Noncompliance

The biggest warning sign in the DISH comments is its request that the Commission reduce the proposed sanctions for buildout noncompliance. While the Commission proposes an automatic license termination for a failure to meet a milestone,³⁸ DISH counters with a proposed case-by-case consideration analysis that would include monetary penalties and other enforcement options.³⁹ This request raises a serious concern that DISH is intent upon cherry picking by initiating service only in a select subset of populous markets, and has no intention of developing the spectrum throughout a broad geographic area. If this concession is granted, and DISH can continuously afford to miss milestones, then this spectrum will continue to lie fallow rather than be promptly built-out to provide terrestrial service.

³⁷ DISH Comments, 22.

³⁸ *NPRM* ¶ 94

³⁹ DISH Comments, 24.

The Commission's proposed penalties are fair and in-line with conditions imposed on other licensees. For example, PCS and AWS licensees who fail to meet the Commission's construction obligations suffer the same license termination remedy. Indeed, most Commission CMRS licenses contain an automatic termination condition if construction is not timely completed. Further, the Commission's requirement that service be spread-out and not concentrated only in the most populated areas furthers the Commission's goals of ensuring nationwide service. Any elimination of the buildout by economic areas would give DISH too much flexibility to ignore whole areas of the country, while still controlling a nationwide license.

The only rational conclusion to reach based upon the DISH comments is that the Commission can have no confidence that DISH is capable of putting the AWS-4 licenses to highly productive uses in a reasonable time since DISH itself has no confidence in its own abilities to successfully and timely build out the spectrum.⁴⁰

IV. THE COMMISSION SHOULD RECAPTURE AND AUCTION AT LEAST A PORTION OF THE 2 GHZ SPECTRUM

While DISH attacked the Commission's proposed conditions as "unrealistic" and "aggressive,"⁴¹ other commenters found them to be the complete opposite and requested that the conditions be more stringent.⁴² Imposing stringent conditions would simply repeat the past.⁴³

⁴⁰ Indeed, the Commission recently concluded that "[a]llowing DISH to continue to suspend operations at a location that it has left vacant for over two years – and for which it still has no committed plans – would allow DISH to warehouse scarce orbit and spectrum resources, contrary to Commission policy." As a result the Commission denied DISH's request to suspend operations on Direct Broadcast Service ("DBS") channels, and will make these DBS channels available for reassignment once the current freeze is lifted instead. *In the Matter of DISH Operating L.L.C. Application to Suspend Operations at the 148° W.L. Orbital Location*, Memorandum Opinion and Order, DA 12-859, ¶ 1 (rel. May 31, 2012).

⁴¹ DISH Comments, 22-23.

⁴² See e.g., T-Mobile Comments, 8-17, New America et al. Comments; RCA Comments.

The Commission's prior efforts to encourage MSS licensees to make better use of the 2 GHz spectrum by giving them increased flexibility (e.g., grants of ATC authority, relaxed satellite/terrestrial service integration requirements, etc.) have not worked.

Rather than continuing down the same dead-end path again, the Commission should take DISH at its word that it cannot meet even the modest standards that the Commission has proposed, and adopt an alternative approach that will *ensure* that the spectrum is put to use by qualified operators. Otherwise, the Commission will be initiating another proceeding in the future to figure out how to recover after DISH has failed to perform.⁴⁴

As MetroPCS proposes in its initial comments, instead of allowing this prime spectrum to continue to lie fallow, the Commission should recapture a portion of the spectrum in exchange for the increased flexibility accorded to DISH, and use this opportunity to allow competitive carriers to acquire spectrum through competitive bidding procedures in an auction.⁴⁵ MetroPCS has submitted two proposals for the Commission's consideration, the first requiring the existing licensees to relinquish 20 MHz of the 40 MHz of 2 GHz MSS spectrum in exchange for being granted separate terrestrial licenses and increased flexibility in the use of their remaining 20 MHz of 2 GHz MSS spectrum (the "20 MHz/20 MHz proposal").⁴⁶ In the alternative, MetroPCS' second proposal suggests that the existing licensees be required to relinquish 30

⁴³ Increased buildout conditions will not benefit the public – rather they will inevitably cause the spectrum to be assigned to one of the large nationwide operators. This will do nothing for the rest of the industry.

⁴⁴ As the Commission's experience with NextWave demonstrates, once licensed, it is very difficult for the Commission to recoup licenses from those who fail to perform. This would especially be the case if clear buildout requirements were not imposed. *See FCC v. NextWave Pers. Commc'ns Inc.*, 537 U.S. 293 (2003) (agreeing with the D.C. Court of Appeals that the Commission violated the Bankruptcy Code when it revoked NextWave's licenses solely due to NextWave's failure to pay debts dischargeable in bankruptcy).

⁴⁵ MetroPCS Comments, 29-33.

⁴⁶ *Id.*

MHz of spectrum in the top 100 MSAs and keep 10 MHz for flexible use without restrictions in those same areas while retaining the whole 40 MHz of spectrum, with increased flexibility, in the remainder of the country (the “30 MHz/10 MHz proposal”).⁴⁷ In both of these scenarios, the returned spectrum would be auctioned by the Commission through competitive bidding measures, to be put to its highest and best use.

Notably, T-Mobile independently advocated a similar approach, which also will serve the public interest. T-Mobile suggests that the Commission reassign at least 20 MHz of the AWS-4 spectrum through a competitive auction which would not only promote competition and diversity of spectrum holders, but would further the Commission’s goals of the National Broadband Plan by repurposing underutilized spectrum for mobile broadband use.⁴⁸ Indeed, by auctioning part of this spectrum the Commission can fulfill two of its important goals – making more spectrum available and promoting competition. As Council Tree states, “[t]he status quo for new entrants in the provision of spectrum-based services is dismal.”⁴⁹ And while the Commission has previously expressed concern about promoting competition in the 2 GHz MSS band,⁵⁰ it now has the opportunity to take action to alleviate these concerns.

In order to promote competition and ensure that available spectrum is fairly distributed, MetroPCS reiterates its support for the Commission’s proposed competitive bidding rules that

⁴⁷ *Id.* MetroPCS explained that in both circumstances, providing the existing licensees with the increased flexibility would constitute consideration for relinquishing the spectrum.

⁴⁸ T-Mobile Comments 17-24.

⁴⁹ Comments of Council Tree Investors, Inc. (“Council Tree”), 3 (filed May 17, 2012).

⁵⁰ *In the Matter of Amendment of Part 2 of the Commission’s Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the introduction of New Advanced Wireless Services, Including Third Generation Wireless Systems*, Third Report and Order, Third Notice of proposed Rulemaking and Second Memorandum and Order, 18 FCC Rcd 2223, 2238 ¶ 29 (2003) (stating its obligation to “ensure that the 2 GHz MSS band is not monopolized”); *see also* T-Mobile Comments, 20.

will allow small businesses to compete for terrestrial geographic area licensees.⁵¹ Several other commenters also have expressed support for such procedures. NTCH requests that the Commission hold an auction under Section 309(j) and offer the spectrum in “geographic chunks no larger than EAs.”⁵² Smaller geographic license areas permit carriers to acquire only those areas that are needed in the near term to meet identified service requirements – which serves to ensure that spectrum a carrier may not need immediately does not go underutilized.⁵³

CouncilTree also suggests that the Commission offer materially increased bidding credits to designated entities.⁵⁴ This is similar to MetroPCS’ own proposed “Broadband Incentive Discount” (“BID”) program.⁵⁵ Under this program, an auction applicant would receive a sliding scale of bidding discount credits in inverse proportion to the amount of attributable spectrum the applicant holds in the geographic area covered by a particular license. This framework “will foster new and increased competition in the wireless marketplace, and will further alleviate the spectrum crisis for many small, rural and mid-sized carriers.”⁵⁶ By reallocating and auctioning at least a portion of the 2 GHz MSS spectrum, the Commission will be allowing for the prompt deployment of a terrestrial license, and alleviating the spectrum crunch for many of the wireless service providers.

⁵¹ *NPRM ¶¶ 83-89.*

⁵² NTCH Comments, 10.

⁵³ *Id.*

⁵⁴ Council Tree Comments, 10-14. Council Tree disagrees, however, that the same size standards and bidding credits as AWS-1 would be appropriate in this case.

⁵⁵ MetroPCS originally proposed the BID program in its comments filed in response to *Fostering Innovation and Investment in the Wireless Communications Market; A National Broadband Plan for our Future, Notice of Inquiry*, GN Docket No. 09-157, GN Docket Nos. 09-157 and 09-51, FCC 09-66, rel. Aug. 27, 2009 (Comments filed September 30, 2009) at 49-58.

⁵⁶ MetroPCS Comments, 31, n. 78.

V. THE METROPCS SHARING PROPOSALS ARE TECHNICALLY FEASIBLE

After reviewing the comments submitted by interested parties, MetroPCS remains confident that its sharing proposals are technically feasible. For example, MetroPCS contended that the use of spot beams would enable the existing licensee to control the use of its spectrum to avoid specific geographic areas – thereby creating preclusion zones in specified major metropolitan areas.⁵⁷ With spot beam technology, third parties that acquire 2 GHz spectrum in the major metropolitan areas will be able to operate in the spectrum without compromising the operations of nearby existing and future MSS operators.⁵⁸ MetroPCS also asserts that the preclusion areas between adjacent networks will be minimal – and may in fact be no greater than the preclusion zones resulting from adjacent terrestrial licensees today. Therefore, no significant area of the U.S. will not be able to be served by either the terrestrial or satellite networks via the 2 GHz band.⁵⁹

DISH's technical report on spectrum sharing (the "Report" or the "DISH Report") concludes that control of satellite and terrestrial operations in the 2 GHz Band may only be accomplished by the same operator – rather than multiple operators.⁶⁰ Although the Report argues that serious interference will occur in certain situations, the report finds that it can be mitigated through careful measures taken by one operator or affiliated operators. An example of such a measure is the use of spot beam technology. The Report finds that "MSS operators may implement a technique that exploits [the] feature of multi-spot beam MSS systems and provides terrestrial service in certain frequencies and certain geographic areas where the MSS system is

⁵⁷ *Id.* at 34.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ DISH Comments, Ex. 1.

not using those frequencies at that time.”⁶¹ As a result of this technology, no additional dynamic channel assignment, power or interference management is necessary if spot beams are used to create preclusion zones.⁶²

While the Report focuses primarily on interference between MSS and terrestrial services in the same area, neither of MetroPCS’ proposals result in such a situation.⁶³ First, with respect to MetroPCS’ 20 MHz/20 MHz proposal, DISH’s analysis would not apply, as the spectrum in the proposal would be exclusive in any given geographic area, and would be no different than the current geographically-adjacent operations among PCS or AWS licensees. Second, under MetroPCS’ 30 MHz/10 MHz sharing proposal, if DISH wishes to continue to provide MSS services, then MetroPCS suggests two possible solutions. The first is that DISH may put a terrestrial base station, which is controlled by its satellite, immediately adjacent to the metropolitan area. Therefore, the ATC transmitter would offer nothing other than the typical interference between terrestrial transmitters, and the MSS operator would then be able to coordinate their terrestrial ATC transmitter with their satellite. A second way of solving the problem is to quantify the power density at the license area boundary to minimize interference. Since this is the method currently used by the Commission to provide for protection between adjacent terrestrial systems, it can and should also be used in this situation.

⁶¹ *Id.* at Ex. 1, § 1.2.

⁶² *Id.* at Ex. 1, § 3.1 (stating that “[s]atellite and terrestrial base station equipment [i.e. satellite spot beams] if properly configured by a signal operator, could dynamically assign channels, power levels, and signal coding to manage inter-system interference.”).

⁶³ As an initial matter, the argument made by DISH assumes that DISH will continue to provide MSS immediately adjacent to the metropolitan area. It is MetroPCS’ understanding that there is nothing the *NPRM* that requires DISH to continue to provide MSS in any area while retaining its AWS-4 license.

Finally, to the extent that DISH and other commenters argue that sharing can only be done through one operator or affiliated operators, MetroPCS argues that since a satellite is essentially a “bent pipe” and the “brains” of the network are located on the ground, it would be easy for different licensees to coordinate behavior by linking their terrestrial “core” systems. Therefore, MetroPCS urges the Commission to further explore these options of spectrum sharing and, if necessary, institute a separate rulemaking proceeding seeking inquiry from technical experts and interested parties on the feasibility of such proposals.

VI. CONCLUSION

MetroPCS applauds the Commission’s intention to rectify the current serious spectrum crunch and promote competition in the wireless industry. However, such feats cannot be accomplished if the licensee is not capable of fulfilling its buildout requirements. DISH’s request to reduce the already modest buildout requirements indicates a lack of confidence or, possibly, a lack of interest in building out the 2 GHz MSS spectrum for terrestrial use.

MetroPCS contends that if the Commission would like to achieve its goal of alleviating the near-term spectrum crunch and introducing competition into wireless, it should explore auctioning a portion of the 2 GHz MSS spectrum through a competitive bidding process. By doing so, the Commission will promote competition by allowing a diverse group of carriers to participate and acquire the spectrum they so desperately need. Finally, MetroPCS suggests the Commission continue to explore the options that have been presented to it regarding spectrum sharing.

MetroPCS maintains that such sharing can be successfully achieved through the use of spot beam technology, and will therefore allow both MSS and terrestrial use on the 2 GHz MSS band.

Respectfully submitted,

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